

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ABC UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015010208

ORDER DENYING MOTION TO
DISMISS

On February 23, 2015, District filed a motion to dismiss Student's amended complaint on the ground that the facts are not in dispute, and applicable law supports a finding that District has no liability to provide the remedies sought by Student. The Motion was not supported by a declaration under penalty or any authenticated evidence establishing any of the facts asserted in the Motion. Student did not file an opposition.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure. Here, District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. The determination of the issues raised in Student's complaint must be made by the hearing ALJ after presentation of evidence and based upon findings of fact. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: March 2, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings